IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 190 OF 2004

Dhanaji Tukaram Kulaye. ... Appellant.
Versus.
Santosh Sonu Malkar. ... Respondent.

Shri D.S.Sawant for the Appellant.
Shri S.M.Railkar for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 2nd March, 2005.

P.C.:

1. Heard the learned Counsel appearing for the parties. The Appeal is by the unsuccessful Defendant challenging the decree for perpetual injunction passed by the trial Court and confirmed by the Appellate Court.

2. Shri Sawant, the learned Counsel appearing for the Appellant submitted that apart from entries made in the proceedings under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act 1947, it was for the Respondents/Plaintiff to lead evidence and to establish that he was in possession of the suit property. He submitted that only on the basis of a certificate issued under section 24 of the said Act of 1947, the Courts below could not have inferred that the Respondent is in possession. He submitted that the suit property originally belongs to the family of the Appellant and it was reconveyed to the Appellant. He urged that the Respondent is taking undue advantage of the errors in the consolidation scheme.

3. I have considered the submissions. The Courts below have relied upon the certificate under section 24 of the said Act of 1947 issued in favour of the Respondent. The said certificate is a document of title. Apart from the said certificate, the Appellate Court has referred to 7x12 extract at Exhibit 49 which shows that on the date of institution of the suit the Respondent/ Plaintiff was in possession of the suit land.

4. Therefore, finding of the Courts below is also based on the entries in the revenue records, apart from the document of title in the form of a certificate under section 24 of trhe said Act of 1947 produced by the Respondent.

5. No substantial question of law arises in the Second Appeal. The same is dismissed with no order as to costs.

6. It is made clear that notwithstanding the dismissal of the Appeal, it will be open for the Appellant to adopt appropriate remedy for challenging the entries made in the consolidation scheme provided it is permissible at this stage to do so.

7. The parties to act on an authenticated copy of this order.

Judge.